IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 42 OF 2007

SMT. SEBASTIANA GRACIANA CABRAL ... Appellant
Versus
SHRI. THOMAS MENINO CARDOZO ... Respondent

Ms. H. Fernandes, Advocate for the appellant.

Mr. C. A. Ferreira, Advocate for the respondent.

Coram:- R. S. MOHITE, J.

Date:- 10th August, 2007

P.C.

This is a second appeal, impugning the concurrent Judgments and Decrees passed by the two lower Courts, refusing an injunction sought by the appellant (original plaintiff) to restrain the respondent who is the erstwhile husband from disposing off or transferring several articles which were gifted by relations and family friends at the time of the marriage or obtained jointly by the plaintiff and the defendant during the subsistence of the marriage. It was the plaintiff's case that the marriage was dissolved by eclectic decree which was confirmed by this Court in the year 1996. It appears that such annulment of marriage is governed by Article 69 and as regards the property, it has same effect as in the case of dissolution of marriage by death in respect of their properties. In such a case, the civil court permits the filing of inventory proceedings. In the said proceedings, parties are at liberty to seek an injunction if the circumstances required for grant of an injunction, arise. In the present case, the lower Courts have dismissed the suit, inter alia, on the footing that no cause of action is made out in the plaint and apart from a bare apprehension, there is no material on record to support the fact that the defendant is likely to dispose off or alienate the articles. In the Judgment

of the Apex Court in the case of Sunil Kumar and another vs. Ram Prakash and ors., reported in AIR 1988 SC 576, the Apex Court has held that the provisions of Section 38 have to be read along with Section 41 which provides that an injunction cannot be granted when a party can obtain an efficacious relief by any other usual mode of proceedings. In that case, a permanent injunction was granted on the footing that coparcener has adequate remedy to impeach the alienation made by a karta and it was held that therefore, he could not move for an injunction restraining the karta from alienating the coparcenary property. In the present case also, it appears that under the Portuguese Civil Code, the wife has right to file inventory proceedings and if necessary conditions for grant of temporary injunction exists, then she can apply for such temporary injunction. Needless to say that on the conclusion of the inventory proceedings, she becomes owner in respect of the property allotted to her.

2. It is also admitted before me that the appellant has already filed an inventory proceedings which were instituted after the annulment was confirmed by this Court. The said inventory proceedings bear No.19/97. There is always liberty to seek an injunction in the said inventory proceedings.

3. In the aforesaid circumstances, there is no substantial question of law which is raised in this second appeal. The second appeal is rejected.

R. S. MOHITE, J.

ssm.